

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1486

Introduced by Assembly Member Dutra

February 21, 2003

~~An act to add and repeal Chapter 1.5 (commencing with Section 10286) of Part 2 of Division 2 of the Public Contract Code, relating to~~
An act relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1486, as amended, Dutra. Public contracts: design-build procurement process.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.

This bill would state the Legislature's intent to enable the Department of General Services to utilize safe and cost-effective options for building and modernizing state facilities through the use of the design-build procurement process.

This bill would authorize the Department of General Services, until January 1, 2008, to use a design-build procurement process for bidding on public projects, including a requirement that certain information be

verified under oath. This bill, by requiring verification to be made under penalty of perjury, would create a new crime and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) *It is the intent of the Legislature to enable the*
2 *Department of General Services to utilize safe and cost-effective*
3 *options for building and modernizing state facilities. The*
4 *Legislature has recognized the merits of the design-build*
5 *procurement process in the past by authorizing its use for specified*
6 *projects undertaken by the Department of General Services, K-12*
7 *schools, and for specified local government projects.*

8 (b) *In addition, it is the intent of the Legislature that the full*
9 *scope of design, construction, and equipment awarded to a*
10 *design-build entity shall be authorized in a single funding phase.*
11 *The funding phase may be authorized concurrently with, or*
12 *separately from, the phase that authorizes the creation of the*
13 *performance criteria and concept drawings.*

14 (c) *It is the intent of the Legislature that design-build*
15 *procurement, as authorized by the act, may not be construed to*
16 *extend, limit, or change in any manner the legal responsibility of*
17 *public agencies and contractors to comply with existing laws.*

18 SEC. 2. (a) *For purposes of this section, the following terms*
19 *have the following meanings:*

20 (1) *“Best value” means a value determined by objective*
21 *criteria and may include, but need not be limited to, price, features,*
22 *functions, life cycle costs, experience, and other criteria deemed*
23 *appropriate by the department.*

24 (2) *“Design-build” means a procurement process in which*
25 *both the design and construction of a project are procured from a*
26 *single entity.*



1 (3) “Design-build entity” means a corporation, limited
2 partnership, partnership, or other association that is able to
3 provide appropriately licensed contracting, architectural, and
4 engineering services as needed pursuant to a design-build
5 contract.

6 (4) “Department” means the Department of General Services.

7 (5) “Project” means the erection, construction, alteration,
8 painting, repair, or improvement of any state structure, building,
9 or other state improvement of any kind.

10 (6) “Skilled labor force availability” means that an agreement
11 exists with a registered apprenticeship program, approved by the
12 California Apprenticeship Council that has graduated apprentices
13 in the preceding five years. This graduation requirement does not
14 apply to programs providing apprenticeship training for any craft
15 that has not been deemed by the Department of Labor and the
16 Department of Industrial Relations to be an apprenticable craft
17 during the period January 1, 2002, to December 31, 2003,
18 inclusive.

19 (b) The Department of General Services, with the concurrence
20 of the Department of Finance, if it is determined to be in the best
21 interest of the state, may enter into a design-build contract for both
22 the design and construction of a project.

23 (c) Bidding for design-build projects shall progress as follows:

24 (1) (A) The department shall prepare a request for proposal
25 setting forth the scope of the project that may include, but need not
26 be limited to, the size, type, and desired design character of the
27 buildings and site, performance specifications covering the
28 quality of materials, equipment, workmanship, preliminary plans,
29 or building layouts, or any other information deemed necessary to
30 describe adequately the state’s needs. The performance
31 specifications and any plans shall be prepared by a design
32 professional duly licensed or registered in this state.

33 (B) Each request for proposal shall do all of the following:

34 (i) Identify the basic scope and needs of the project or contract,
35 the expected cost range, and other information deemed necessary
36 by the department to inform interested parties of the contracting
37 opportunity.

38 (ii) Invite interested parties to submit competitive sealed
39 proposals in the manner prescribed by the department.

40 (iii) Include a section identifying and describing the following:

1 (I) All significant factors and subfactors that the department
2 reasonably expects to consider in evaluating proposals, including
3 cost or price and all nonprice related factors and subfactors.
4 (II) The methodology and rating or weighting scheme that will
5 be used by the department in evaluating competitive proposals and
6 specify whether proposals will be rated according to numeric or
7 qualitative values.
8 (III) The relative importance or weight assigned to each of the
9 factors identified in the request for proposal.
10 (IV) As an alternative to subclause (III), the department shall
11 specifically disclose whether all evaluation factors, other than cost
12 or price, when combined, are any of the following:
13 (ai) Significantly more important than cost or price.
14 (aii) Approximately equal in importance to cost or price.
15 (aiii) Significantly less important than cost or price.
16 (V) If the department wishes to reserve the right to hold
17 discussions or negotiations with responsive bidders, it shall
18 specify in the request for proposal and shall publish separately or
19 incorporate into the request for proposal the applicable rules and
20 procedures to be observed by the department to ensure that any
21 discussions or negotiations are conducted in a fair and impartial
22 manner.
23 (C) The department, in each design-build request for proposal,
24 may identify categories of subcontractors, by subcontractor
25 license classification, that will be listed by the design-build entity
26 at the time of bid. In selecting subcontractors that will be listed by
27 the design-build entity, the department shall limit the
28 identification to only those license classifications deemed by the
29 department to be essential for proper completion of the project.
30 (2) (A) The department shall establish a procedure to
31 prequalify design-build entities using a standard form or
32 questionnaire. This standard form or questionnaire shall require
33 information including, but not limited to, all of the following:
34 (i) If the design-build entity is a partnership, limited
35 partnership, or other association, a listing of all of the partners,
36 general partners, or association members who will participate as
37 subcontractors in the design-build contract, including, but not
38 limited to, electrical and mechanical subcontractors.
39 (ii) Evidence that the members of the design-build entity have
40 completed, or demonstrated, the experience, competency,

1 *capability, and capacity to complete projects of similar size, scope,*
2 *or complexity, and that proposed key personnel have sufficient*
3 *experience and training to competently manage and complete the*
4 *design and construction of the project.*

5 *(iii) The licenses, registration, and credentials required to*
6 *design and construct the project, including information on the*
7 *revocation or suspension of any license, credential, or*
8 *registration.*

9 *(iv) Evidence that establishes that the design-build entity has*
10 *the capacity to obtain all required payment and performance*
11 *bonding, liability insurance, and errors and omissions insurance,*
12 *as well as a financial statement that assures the department that*
13 *the design-build entity has the capacity to complete the project.*

14 *(v) Any prior serious or willful violation of the California*
15 *Occupational Safety and Health Act of 1973 (Part 1 (commencing*
16 *with Section 6300) of Division 5 of the Labor Code) or the federal*
17 *Occupational Safety and Health Act of 1970 (Public Law 91-596),*
18 *settled against any member of the design-build entity, and*
19 *information concerning a contractor member's workers'*
20 *compensation experience history and worker safety program.*

21 *(vi) Information concerning any debarment, disqualification,*
22 *or removal from a federal, state, or local government public works*
23 *project.*

24 *(vii) Any instance where an entity, its owners, officers, or*
25 *managing employees, submitted a bid on a public works project*
26 *and were found by an awarding body not to be a responsible bidder.*

27 *(viii) Any instance where the entity, its owner, officers, or*
28 *managing employees defaulted on a construction contract.*

29 *(ix) Any prior violations of the Contractors' State License Law*
30 *(Chapter 9 (commencing with Section 7000) of Division 3 of the*
31 *Business and Professions Code), excluding alleged violations of*
32 *federal or state law including the payment of wages, benefits,*
33 *apprenticeship requirements, or personal income tax withholding,*
34 *or of Federal Insurance Contribution Act (FICA) withholding*
35 *requirements, settled against any member of the design-build*
36 *entity.*

37 *(x) Information concerning the bankruptcy or receivership of*
38 *any member of the entity, including information concerning any*
39 *work completed by a surety.*

1 (xi) Information concerning all settled adverse claims,
2 disputes, or lawsuits between the owner of a public works project
3 and any member of the design-build entity during the five-year
4 period preceding submission of the bid pursuant to this section, in
5 which the claim, settlement, or judgment exceeds fifty thousand
6 dollars (\$50,000). Information shall also be provided concerning
7 any work completed by a surety during this period.

8 (xii) In the case of a partnership or other association that is not
9 a legal entity, a copy of the agreement creating the partnership or
10 association.

11 (B) The information required pursuant to this subdivision shall
12 be verified under oath by the design-build entity and its members
13 in the manner in which civil pleadings in civil actions are verified.
14 Information that is not a public record pursuant to the California
15 Public Records Act (Chapter 3.5 (commencing with Section 6250)
16 of Division 7 of Title 1 of the Government Code) may not be open
17 to public inspection.

18 (3) The department shall establish a procedure for final
19 selection of the design-build entity. Selection shall be based on
20 either of the following criteria:

21 (A) A competitive bidding process resulting in lump-sum bids
22 by the prequalified design-build entities. The award shall be made
23 on the basis of the lowest responsible bid.

24 (B) Notwithstanding any provision of this code or the
25 Government Code, the department may use a design-build
26 competition based upon performance and other criteria set forth
27 by the department in the solicitation of proposals. Criteria used in
28 this evaluation of proposals may include, but need not be limited
29 to, the proposed design approach, life cycle costs, project features,
30 and project functions. However, competitive proposals shall be
31 evaluated by using the criteria and source selection procedures
32 specifically identified in the request for proposal. Once the
33 evaluation is complete, all responsive bidders shall be ranked from
34 the most advantageous to least advantageous to the department.

35 (4) Any architectural or engineering firm or individual
36 retained by the department to assist in the development criteria or
37 preparation of the request for proposal is not eligible to participate
38 in the competition with the design-build entity.

39 (5) The award of the contract, if not based on a lump-sum
40 award to the lowest responsible bidder, shall be made to the

1 responsible bidder whose proposal is determined, by the
2 department to be the best value to the state.

3 (6) Proposals shall be evaluated and scored solely on the basis
4 of the factors and source selection procedures identified in the
5 request for proposal. However, the following minimum factors
6 shall collectively represent at least 50 percent of the total weight
7 or consideration given to all criteria factors: price, technical
8 expertise, life cycle costs over 15 years or more, skilled labor force
9 availability, and acceptable safety record.

10 (7) The decision supporting the department's contract award
11 and the contract file must be sufficient to satisfy an external audit.

12 (8) Notwithstanding any provision of this code, upon issuance
13 of a contract award, the department shall publicly announce its
14 awards identifying the contractor to whom the award is made, and
15 the contract price.

16 (9) For the purposes of this section, a bidder's "safety record"
17 shall be deemed "acceptable" if its experience modification rate
18 for the most recent three-year period is an average of 1.00 or less,
19 and its average total recordable injury or illness rate and average
20 lost work rate for the most recent three-year period does not exceed
21 the applicable statistical standards for its business category, or if
22 the bidder is a party to an alternative dispute resolution system as
23 provided for in Section 3201.5 of the Labor Code.

24 (c) (1) Any design-build entity that is selected to design and
25 build a project pursuant to this section shall possess or obtain
26 sufficient bonding to cover the contract amount for nondesign
27 services, and errors and omission insurance coverage sufficient to
28 cover all design and architectural services provided in the
29 contract. This section does not prohibit a general or engineering
30 contractor from being designated the lead entity on a design-build
31 entity for the purposes of purchasing necessary bonding to cover
32 the activities of the design-build entity.

33 (2) Any payment or performance bond written for the purposes
34 of this section shall use a bond form developed by the department.

35 (3) (A) All subcontracts that were not listed by the
36 design-build entity in accordance with subdivision (b) of this
37 section shall be awarded by the design-build entity.

38 (B) The design-build entity shall do all of the following:

39 (i) Provide public notice of the availability of work to be
40 subcontracted.

1 (ii) *Provide a fixed date and time on which the subcontracted*
2 *work will be awarded.*

3 (C) *Subcontractors bidding on contracts pursuant to this*
4 *subdivision shall be afforded the protections contained in Chapter*
5 *4 (commencing with Section 4100).*

6 (D) *In a contract between the design-build entity and a*
7 *subcontractor, and in a contract between a subcontractor and any*
8 *subcontractor thereunder, the percentage of the retention proceeds*
9 *withheld may not exceed the percentage specified in the contract*
10 *between the school district and the design-build entity. If the*
11 *design-build entity provides written notice to any subcontractor*
12 *who is not a member of the design-build entity, prior to or at the*
13 *time the bid is requested, that a bond may be required and the*
14 *subcontractor subsequently is unable or refuses to furnish a bond*
15 *to the design-build entity, then the design-build entity may*
16 *withhold retention proceeds in excess of the percentage specified*
17 *in the contract between the department and the design-build entity*
18 *from any payment made by the design-build entity to the*
19 *subcontractor.*

20 (E) *In accordance with the provisions of applicable state law,*
21 *the design-build entity may be permitted to substitute securities in*
22 *lieu of the withholding from progress payments. Substitutions shall*
23 *be made in accordance with Section 22300.*

24 (4) *The department shall establish and enforce a labor*
25 *compliance program containing the requirements outlined in*
26 *Section 1771.5 of the Labor Code or shall contract with a*
27 *third-party to operate a labor compliance program containing the*
28 *requirements outlined in Section 1771.5 of the Labor Code. This*
29 *requirement does not apply to projects where the school district or*
30 *the design-build entity has entered into a collective bargaining*
31 *agreement that binds all of the contractors performing work on the*
32 *project.*

33 (d) (1) *The minimum performance criteria and design*
34 *standards established pursuant to this act by the department for*
35 *quality, durability, longevity, and life cycle costs, and other*
36 *criteria deemed appropriate by the department shall be adhered to*
37 *by the design-build entity. Any deviations from those standards*
38 *may only be allowed by written consent of the department.*

39 (2) *The department shall be the employer of the inspector. The*
40 *project inspector shall be fully independent from any member of*

1 *the design-build entity and may not have any affiliation with any*
2 *member of the design-build entity or any of the project*
3 *subcontractors.*

4 *(3) The design-build entity shall be liable for building the*
5 *facility to specifications set forth in the design-build contract in the*
6 *absence of contractual language to the contrary.*

7 *(e) This section does not exempt design-build contracts from*
8 *otherwise applicable provisions of this code unless the exemption*
9 *is granted expressly, or by necessary implication.*

10 *(f) This section shall remain in effect only until January 1,*
11 *2008, and as of that date is repealed, unless a later enacted statute,*
12 *that is enacted before January 1, 2008, deletes or extends that date.*

13 *SEC. 3. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

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24 **All matter omitted in this version of the**
25 **bill appears in the bill as amended in the**
26 **Senate April 10, 2003. (JR 11)**
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